

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILBURN LETSON and TENNESSEE VALLEY AUTHORITY,  
CONS BELLEFONTE NUCLEAR PLANT, Chattanooga, TN

*Docket No. 03-619; Submitted on the Record;  
Issued June 27, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has more than a 33 percent binaural hearing loss for which he received a schedule award.

The Board finds that appellant has no more than a 33 percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule members or functions of the body. However, the Act does not specify the manner in which the percentage loss shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office of Workers' Compensation Programs.<sup>3</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the 5<sup>th</sup> ed. 2001 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>4</sup> Under the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.<sup>5</sup> Then the "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>6</sup> The remaining amount is multiplied

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> A.M.A., *Guides*, 246-55 (5<sup>th</sup> ed. 2001).

<sup>6</sup> *Id.* at 250.

by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>7</sup> The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.<sup>8</sup> In addition, the Office's procedures require that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.<sup>9</sup> The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association, or state licensure as an audiologist.<sup>10</sup>

On June 28, 2002 appellant, then a 70-year-old painter/sandblaster, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained an employment-related hearing loss. The employing establishment controverted the claim. By letter dated September 26, 2002, the Office accepted appellant's claim for bilateral hearing loss.

On September 18, 2002 the Office medical adviser reviewed the otology and audiological testing performed on September 9, 2002 by Dr. George H. Godwin, a Board-certified otolaryngologist and applied the Office's standardized procedures to this evaluation.<sup>11</sup> Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 40, 45, 55 and 70 respectively. These decibel losses were totaled at 210 decibels and were divided by 4 to obtain the average hearing loss of 52.5 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 27.5, which was multiplied by the established factor of 1.5 to compute a 41.25 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 35, 45, 45 and 60 respectively. These decibel losses were totaled at 185 and were divided by 4 to obtain an average hearing loss of 46.25 decibels. This average was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal 21.25 which were multiplied by the established factor of 1.5 to compute a 31.88 percent hearing loss in the right ear. To compute the binaural hearing loss, the lesser loss in the right ear, 31.88, was multiplied by the established factor of 5, added to the 41.25 percent loss in the left ear and this sum was divided by the established factor of 6 to calculate a 33.44 binaural loss, which was rounded-down to 33 percent.<sup>12</sup>

On appeal, appellant contends that the schedule award he received was not adequate compensation for his binaural hearing loss. The schedule award provisions of the Act provide for compensation to employees sustaining permanent impairment from loss of use of specified

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Supra* note 3.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8(a)(2) (September 1994).

<sup>11</sup> Dr. Godwin determined that appellant had an employment-related sensorineural hearing loss

<sup>12</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700.4b(2)(b) (September 1994).

members of the body.<sup>13</sup> The Act establishes a maximum of 200 weeks of compensation as the award for total binaural hearing loss.<sup>14</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>15</sup> so appellant's award of compensation for a 33 percent binaural hearing loss entitled appellant to 33 percent of 200 weeks of compensation or 66 weeks of compensation. Because appellant has been fully compensated for binaural hearing loss and his condition has not worsened since that time under the Office's standards for evaluating hearing loss, he is not entitled to any additional compensation.<sup>16</sup>

The November 13, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 27, 2003

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>13</sup> 5 U.S.C. § 8107(c) and implementing regulation at 20 C.F.R. § 10.404.

<sup>14</sup> 5 U.S.C. § 8107(c)(13)(b).

<sup>15</sup> 5 U.S.C. § 8107(c)(19).

<sup>16</sup> Dr. Godwin recommended that appellant use hearing aids. Appellant may wish to request authorization from the Office for use of such medical devices.